

Panaji, 11th August, 2005 (Sravana 20, 1927)

SERIES II No. 19

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 18-01-2005 in reference No. IT/92/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/92/98

Shri Dharma Shirodkar,
H. No. 40, Moitem, Asnora,
Bardez-Goa.

... Workman/Party I

V/s

The Managing Director,
M/s. Kadamba Transport Corporation Ltd.,
P. O. Box No. 321,
East Wing,
Panaji, Goa.

... Employer/Party II

Workman/Party I - represented by Adv. Shri A. Kundaikar.

Employer/Party II - represented by Adv. Shri C. J. Mane.

Panaji, dated: 18-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central 14 of 1947) the Government of Goa by order dated 25-9-1998 bearing No. IRM/CON/SG/(24)/98/10978 referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of M/s. Kadamba Transport Corporation Limited, Panaji, Goa, in dismissing from services Shri Dharma Shirodkar, Conductor, with effect from 1-8-1997 is legal and justified?

(2) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/92/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that, he was employed as a Conductor by the Employer/Party II (for short "employer") and he placed at Margao depot at the time when he was dismissed from service. That on 17-1-1995 line checking staff intercepted the bus/vehicle No. GDX 217 when it was plying on route Panajim-Cansaulim-Margao at Agacaim at 18.55 hours. That on 30-9-1998 he was given a default notice mentioning that certain irregularities were found when vehicle was checked at Agacaim on 17-9-1995 such as finding three passengers traveling without tickets from Panaji to Agacaim, though he had collected bus fair from them but no ticket was issued to them and finding excess amount of Rs. 132/- with cash then the sale of tickets. That he replied to the show cause notice on 5-10-1995 denying the allegations made in the default notice. That thereafter the charge sheet dated 11-10-1995 was issued to him and he replied to the said charge sheet by reply dated 25-10-1995 denying the charges leveled against him. That an enquiry was held against him in reply to the said charge

sheet. That the enquiry held against him was not fair and proper and it was held in violation of the principles of natural justice. That on completing the inquiry, the inquiry officer submitted his findings holding him guilty of the charges and on receipt of the findings a show cause notice dated 15-5-1997 was issued to him, which was replied to by him. That thereafter the employer vide order dated 1-8-1997 dismissed the workman from service with immediate effect. The workman contended that the order of dismissal passed against him is illegal and unjustified and as such he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer admitted that on 17-9-1995 the line checking staff checked the vehicle GDX 214 at Agacaim at 15.55 hours on which the workman was on duty. The employer also admitted that default notice was issued to the workman and a reply to the same was received from the workman. The employer denied that the inquiry was conducted against the workman in violation of the principle of natural justice and stated that fair opportunity was given to the workman to defend himself in the inquiry. The employer stated that the findings given by the Inquiry Officer are based on the evidence on record. The employer stated that the workman was dismissed from service since charges were proved against him in the inquiry. The employer stated that the dismissal order passed against the workman is legal and justified and he is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and the issue No. 1 and 2 were treated as preliminary issues. The issue No. 1 pertained to the fairness of the enquiries and the issue No. 2 pertained to the findings of the Inquiry Officer. After the parties had lead evidence on the preliminary issues this Tribunal by findings dated 31-7-2001 held that the inquiry held against the workman is fair, proper and impartial and that he is guilty of the charges leveled against him which constitute misconduct as per the certified standing orders. Thus, the issue No. 1 and 2 stood disposed off. Thereafter the case was fixed for recording the evidence of the parties on remaining issues. Accordingly the evidence of the workman was recorded the case was fixed for recording the evidence of the employer. After the evidence of the employer was completed the case was fixed for hearing final arguments. Before the final arguments could be heard the parties submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 11-1-2005 at Exb. 14. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 11-5-2005 and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 11-1-2005 Exb. 14.

ORDER

1. The Workman/Party I do and does hereby Waives all his claims, demand and disputes and has no other claims. It is agreed by the Workman/Party-I that he will not claim subject matter reference in future in any other Tribunal or court.
2. It is agreed between the parties that, the workman concerned in the reference shall be appointed in the service of the Corporation as a Conductor within 15 days from the date of filing the consent terms.
3. It is agreed by the Employer/Party II that the Workman/Party I will be appointed as a fresh Conductor on probation in terms of Certified Standing Orders of the Corporation in the pay Scale of Rs. 3050-75-3950-80-4590/-.
4. It is agreed by the Workman/Party I, to accept the fresh appointment without back wages, without continuity in service and without protecting the seniority.
5. It is agreed between the parties that, the Workman/Party I will not be entitled for benefit of arrears/difference in wages from the date of dismissal till date of joining.
6. It is agreed by the Workman/Party I that, he will fully co-operate with Employer/Party II in discharging his duties sincerely.
7. It is agreed by the Workman/Party I that, he will not raise any claim before any authority for any back wages/monetary benefits and seniority in service.
8. It is agreed by the Workman/Party I that he will withdraw all the claim applications filed before the concerned authorities prior to joining to the duties.
9. It is agreed between the parties that the claim raised in the above reference stands conclusively settled in terms of the present consent terms.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-01-2005 in reference No. IT/137/99 is hereby published as required by Section

17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/137/99

Mrs. Maya Gadekar,
C/o Ashok Gadekar,
Sawanta Waddo, Calangute,
Bardez-Goa.

... Workman/Party I.

V/s

M/s. Canvas Shoe Co. (Goa) Pvt. Ltd.,
Thivim Industrial Estate,
Karaswada, Bardez-Goa.

... Employer/Party II

Party I - Represented by Adv. Shri Suhas Naik.

Party II - Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 14-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central 14 of 1947) the Government of Goa by order dated 21st December, 1999 bearing No. IRM/CON-MAP/(85)/99/6177 referred the following dispute for adjudication of this Tribunal.

(A)(1) "Whether the action of the management of M/s. Canvas Shoe Co.(Goa) Pvt. Limited, Thivim Industrial Estate, Karaswada, in refusing employment to Mrs. Maya Gadekar, with effect from 1-7-1977 is legal and justified?

(2) If not, to what relief the workperson is entitled?

(B)(1) "Whether the action of the management of M/s. Canvas Shoe Co.(Goa) Pvt. Limited, Thivim Industrial Estate, Karaswada, in terminating the services of Mrs. Maya Gadekar, with effect from 23-2-1999 is legal and justified?

(2) If not, to what relief the workperson is entitled?

2. On receipt of the reference, a case was registered under No. IT/137/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party

I (for short, "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that she was employed with the Employer/Party II (for short, "employer") in its factory situated at Karaswada, Mapusa Goa, as a general helper initially w.e.f., 25-3-91. That thereafter from September, 1995 she was asked to perform the work of a typist clerk but no written order was issued to her. That she had proceeded on maternity leave from 18-2-97 and on the expiry of the maternity leave she reported for work on 1-7-97 but the Manager refused entry to her without assigning any justified reasons. That on 21-7-97 she received a letter in the form of show cause notice and charge sheet and it was mentioned that an enquiry will be conducted against her in connection with certain acts of misconduct mentioned in the said letter. That she replied to the said letter denying the allegations made against her. That thereafter an enquiry was conducted against her by the Inquiry Officer namely Adv. Shri H. G. Gawandi. That the enquiry proceedings were held against her lastly on 11-9-98 and thereafter no enquiry was conducted nor the findings of the Inquiry Officer nor the show cause notice was served on her prior to termination of his service. That suddenly on 23-3-99 she received an order of termination wherein certain allegations were made against her and her husband. That she denied the allegations by replying to the said termination order. The workman contended that the termination order dated 23-2-99 issued to her is totally illegal and bad in law. The workman contended that she had already raised the industrial dispute in the matter and refusal of employment to her from 1-4-87 and also the subsequent termination order dated 23-2-99 issued to her. That the conciliation proceedings held by the conciliation officer, Mapusa, ended in failure. The workman contended that the action of the employer in terminating her services by order dated 23-2-99 is illegal and unjustified and hence she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was employed as a general helper in the Insole Screen Printing Section. The employer stated that around September, 1995 the regular typist cum clerk left the services and since there was no much typing work to be performed the employer did not employ any other person in her place and as and when need arose the workman was requested to do the typing work and she was paid for the said work. The employer stated that the workman went on maternity leave from 18-2-97 and when she reported for work on 1-7-97 she was allotted her usual work of general helper in the Insole Screen Printing Section but she refused to work in the said section and insisted that she would only do the work of typist cum clerk in the office and did not report for work and remained absent unauthorizedly. The employer stated that a letter dated 2nd July, 1997 was sent to her intimating to her about her unauthorized absence from 1st July, 1997 and she was asked to report for work within 3 days failing which appropriate action will be taken against her as per the Certified Standing Orders. The employer stated that

inspite of the said letter the workman did not report and continued to remain absent and therefore charge sheet dated 21-7-97 was issued to her for having committed acts of misconduct and Mr. H. Gawandi was appointed as an Inquiry Officer to conduct enquiry against the workman. The employer stated that after the completion of the enquiry proceedings on 11-9-98 at about 11.30 a.m., the workman along with her husband went to the factory office and demanded residential address and telephone of the General Manager from the Asst. Manager who expressed his inability to furnish the same. The employer stated that on 14th September, 1998 the Inquiry Officer by his letter dated 14-9-98 informed the employer that on 12th September, 1998 the husband of the workman telephoned him and threatened him with dire consequences if he continued to conduct the enquiry and as such the Inquiry Officer stated that he does not intend to continue with the enquiry as there was danger to his life from the husband of the workman. The employer stated that thereafter the management tried to appoint some other person as Inquiry Officer but on account of the threats given to the Inquiry Officer no body was willing to conduct the enquiry against the workman. The employer stated that in view of the above situation the management decided to dismiss the workman from service for having committed acts of misconducts and for remaining absent without leave from 1st July, 1997. The employer stated that accordingly the services of the workman were terminated by order dated 23-2-99 with immediate effect. The employer denied that the termination order is illegal and unjustified and stated that the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 10 and thereafter the evidence of the workman was recorded. When the case was fixed for cross examination of the workman the parties submitted that they are trying to arrive at an amicable settlement and accordingly the case was adjourned for filing the terms of settlement. On 22-12-2004 the parties appeared and they filed an application at Exb. 15 stating that the dispute between the workman and the employer has been amicably settled vide composite settlement dated 22-12-2004 signed between the union and the employer. The parties stated that in view of the settlement the dispute does not survive and they prayed that no dispute award be passed. Along with the said application the parties produced the copy of the settlement dated 22-12-2004 signed between the union and the employer. Since the dispute between the workman and the employer has been amicably settled in terms of the settlement dated 22-12-2004 the dispute does not exist and the reference does not survive. In the circumstances I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute between the workman Smt. Maya Gadekar and the management of M/s. Canvas Shoe Co.(Goa) Pvt.

Ltd., Thivim Industrial Estate, Karaswada, Bardez, Goa, does not exist in view of the settlement dated 22-12-2004.

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 12-01-2005 in reference No. IT/42/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/42/99

Workmen rep. by the President,
Goa Trade & Commercial Workers Union,
Velhos Bldg.,
Opp. Municipal Garden,
Panaji, Goa. ... Workmen/Party I

V/s

The Proprietor,
M/s. Tough Seals Pvt. Ltd.,
Bethora Industrial Estate,
Bethora, Ponda, Goa. ... Employer/Party II

Workmen/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. Nigale.

Panaji, dated: 12-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-04-99 bearing No. IRM/COM/P/(232)/1998/2098 referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Tough Seals Limited, Bethora, Ponda, Goa in refusing to concede the following demands of the workmen represented by the Goa Trade and Commercial Workers' Union, Panaji, Goa, is legal and justified?

1. Flat-Rise and Pay-Scales:

- The Union calls upon the management to take a fresh look at the Pay-Scales and the designations applicable to the workers and correctly grade each worker in consultation with the union.
- The union demands a Flat-Rise of Rs. 500/- per month to each worker; to be added to the existing salary as on 1-12-1996. The total of the Flat-Rise of Rs. 500/- per month Plus the existing salary of each worker as on 1-12-1996 should be placed in the respective Pay-Scales given below at the appropriate stage.

Grade	Designation	Pay-Scales			
I	Moulder	1275-50-1225-60-1525-70-1875-80-2275			
		5	5	5	5
II	Supervisor/ in-Charge	1275-70-1625-80-2025-90-2475-100-2975			
		5	5	5	5

- Seniority Increments:** Those workers who have completed five years as on 1-1-1997 shall be paid One Extra Increment.
- House Rent Allowance (HRA):** That each worker ought to be paid a House Rent Allowance at the rate of Rs. 400/- per month.
- Fixed Dearness Allowance (FDA):** That each worker ought to be paid a fixed Dearness Allowance of Rs. 400/- per month, with effect from 1-1-1997.

- Variable Dearness Allowance (VDA):** That with effect from 1-1-1997 each worker be paid a Variable Dearness Allowances at the rate of Rs. 1/50 on the AAICPI base 1500 points (1960-100).

The Variable Dearness Allowance should be revised every quarter.

- Travelling Allowance:** That each worker be paid Rs. 200/- per month towards Travelling Allowance with effect from 1-1-1997.
- Washing Allowance and Uniforms:** That each worker be paid Rs. 50/- per month towards Washing Allowance. Two pairs of Uniforms be issued in month of January, every year.
- Shift Allowance:** That with effect from 1-1-1997 each worker be paid the following Shift Allowance.

2nd shift 5/- per shift.
3rd shift 10/- per shift.

- Tea and Snacks:** That the management should ensure that the workers are served Two Cups of Tea and Snacks twice in each shift.

- Leave Facilities:** The workers should be eligible to the following Leave Facilities:

Privilege Leave	30 days per annum with accumulation upto 100 days;
Casual Leave	10 days per annum with the benefit to encash;
Sick Leave	10 days per annum with the benefit to accumulate upto 30 days;
Holidays	12 days per annum.

- Safety, Rest Room:** To be discussed.
- Increments:** That each worker be paid Increments in the month of January, every year.
- Salary Slips:** Should be issued to each worker.
- Hours of Work/Overtime:**

- In case a worker is required to work (Voluntarily) for more than eight (8) hours; he shall be paid double the rate of wages.

- In case a worker is required to work on Holidays/Weekly-off-days; he shall be paid double the rate of wages and be given a paid compensatory-off within ten days from date.

- Confirmation Letters:** All those workers who have completed six months of service should be issue Confirmation Letters.

- Provident Fund:** That each worker should be covered under the Provident Fund Scheme and its benefits.

- First-Aid-Box:** A fully equipped First-Aid-Box should be maintained in the factory premises.

2. If not, to what relief the workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/42/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short "union") filed its statement of claim at Exb. 3. The facts of the case in-brief as pleaded by the union are that it is a registered trade union and all the workers of the employer/Party II (for short "employer") are its members. That the employer is having a factory at Bethora Industrial Estate, Bethora, Ponda, Goa, and it supplies various materials including rubber mouldings, vehicle packings, oil seals, orings, rubber foundations and other components required for various other machineries for big companies like M.R.F., A.C.G.L., I.F.B. etc. That the salaries paid to the workers are very low compared to the workers working in other factories situated in the same area, carrying on similar business. That the present salaries paid to the workers does not take care of the rising cost of living index. That the product manufactured by the employer has high demand in the open market and as such the employer

makes huge profit every year. That the union submitted charter of demands dated 12-12-1996 but on receipt of the same the employer started harassing and victimizing the workers with malafied intentions by adopting unfair labour practices such as refusing employment to the workers, stopping annual increment payable to the workers etc. Inspite of the repeated request made by the union to resolve the charter of demands, the employer failed to do so and therefore the union raised industrial dispute before the Assistant Labour Commissioner, Ponda, vide letter dated 12-12-1996. That the conciliation proceedings held by the Assistant Labour Commissioner resulted in failure due to the adamant and rigid stand taken by the employer. The union contended that the demands raised by it on behalf of the workers against the employer are legal and justified and employer has financial capacity to meet the said demands.

3. The employer filed written statement at Exb. 4. The employer stated that the union has no authority to raise the dispute on behalf of the workers or to represent them in the present reference. The employer stated that its establishment is closed with effect from 3-7-1999. The employer denied that its workers are the members of the union namely the Goa Trade & Commercial Workers Union. The employer stated that the salaries paid to the workers till the date of closure of the establishment were quite reasonable considering the financial capacity of the employer. The employer denied that the workers were harassed or victimized or threatened or unfair labour practices were adopted on receipt of the charter of demands from the union. The employer denied that the demands raised by the union on behalf of the workers are legal and justified. The employer denied that it has the financial capacity to meet the demands raised by the union. The employer stated that the workers are not entitled to any relief. The union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 10. Thereafter the case was fixed for recording the evidence of the union. However, before the evidence was recorded the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed for filing the terms of the settlement. On 3-11-2004 the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 3-11-2004 at Exb. 11. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms certainly are in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 3-11-2004 Exb. 11.

ORDER

- 1) It is agreed by and between the parties that the party II shall pay to the undermentioned workmen the amounts shown against their names in full and

final settlement of their claims in Ref. Nos. IT/56/1999, IT/42/1999, IT/83/2000 and IT/82/2000.

1. Rajesh Gaonkar	Rs. 7,636/-
2. Kamlakant Gaonkar	Rs. 12,570/-
3. Devidas Priolkar	Rs. 10,818/-
4. Gajanan Gaonkar	Rs. 12,883/-
5. Deu Gaonkar	Rs. 12,883/-
6. Umesh Gaonkar	Rs. 12,570/-
7. Sudesh Gaonkar	Rs. 10,818/-
8. Sanju Gaonkar	Rs. 9,312/-
9. Gurudas Gaonkar	Rs. 9,312/-

- 2) The aforesaid amounts shall be paid to the above mentioned workmen in five installments. The first installment shall be paid on 3-11-2004, the second on 15-12-2004, the third on 31-1-2005, the fourth on 15-3-2005 and the fifth installment shall be paid on 30-4-2005. The amounts of each installment and the Cheque Numbers in respect thereof are shown in the Annexure hereto.
- 3) The Workmen/Party I agree that they shall withdraw Case No. LCC/35/1999 pending in the Hon'ble Labour Court, Government of Goa, Panaji.
- 4) The Workmen/Party I and the Goa Trade and Commercial Workers Union state that all their dispute with the Party II have been conclusively settled with the signing of these consent terms and they have no further claim or demand of whatsoever nature against the Party II.
- 5) The Parties agree to file these consent terms in the Hon'ble Industrial Tribunal, Government of Goa with a request to pass an Award in terms of the consent terms.

ANNEXURE

Sr. No.	Name	Cheque No.	Date	Amount
1	2	3	4	5
1. Rajesh Gaonkar		008128	03-11-2004	1,528/-
		008129	15-12-2004	1,528/-
		008130	31-01-2005	1,528/-
		040721	15-03-2005	1,528/-
		040722	30-04-2005	1,528/-
2. Kamlakant Gaonkar		040701	03-11-2004	2,514/-
		040702	15-12-2004	2,514/-
		040703	31-01-2005	2,514/-
		040704	15-03-2005	2,514/-
		040705	30-04-2005	2,514/-
3. Devidas Priolkar		040706	03-11-2004	2,164/-
		040707	15-12-2004	2,164/-
		040708	31-01-2005	2,164/-
		040709	15-03-2005	2,164/-
		040710	30-04-2005	2,164/-

1	2	3	4	5
4. Gajanan Gaonkar	040723	03-11-2004	2,577/-	
	040724	15-12-2004	2,577/-	
	040725	31-01-2005	2,577/-	
	040726	15-03-2005	2,577/-	
	040727	30-04-2005	2,577/-	
5. Deu Gaonkar	040728	03-11-2004	2,577/-	
	040729	15-12-2004	2,577/-	
	040730	31-01-2005	2,577/-	
	040731	15-03-2005	2,577/-	
	040732	30-04-2005	2,577/-	
6. Umesh Gaonkar	040733	03-11-2004	2,514/-	
	040734	15-12-2004	2,514/-	
	040735	31-01-2005	2,514/-	
	040736	15-03-2005	2,514/-	
	040737	30-04-2005	2,514/-	
7. Sudesh Gaonkar	040738	03-11-2004	2,164/-	
	040739	15-12-2004	2,164/-	
	040740	31-01-2005	2,164/-	
	040801	15-03-2005	2,164/-	
	040802	30-04-2005	2,164/-	
8. Sanju Gaonkar	040716	03-11-2004	1,863/-	
	040717	15-12-2004	1,863/-	
	040718	31-01-2005	1,863/-	
	040719	15-03-2005	1,863/-	
	040720	30-04-2005	1,863/-	
9. Gurudas Gaonkar	040711	03-11-2004	1,863/-	
	040712	15-12-2004	1,863/-	
	040713	31-01-2005	1,863/-	
	040714	15-03-2005	1,863/-	
	040715	30-04-2005	1,863/-	

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-01-2005 in reference No. IT/02/2001 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/2/2001

Shri Ulhas Chandrakant Ambekar,
Pernem-Goa. ... Workman/Party I
V/s
M/s. Geno Pharmaceuticals Ltd.,
Thivim, Karaswada,
Bardez-Goa. ... Employer/Party II
Workmen/Party I - In person.
Employer/Party II - Represented by Adv. Shri M. S.
Bandodkar.

Panaji, dated: 14-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2nd January, 2001 bearing No. IRM/COM/MAP/(49)(232)/2000/84 referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Geno Pharmaceuticals Limited, Thivim Industrial Estate, Thivim, Karaswada, Bardez-Goa, to refused employment to Shri Ulhas Chandrakant Ambekar, with effect from 15-5-2000 to 27-8-2000 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/2/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was working with the Employer/Party II (for short, "employer") from 13-7-98. That on 13-5-2000 he was told by the personnel Officer not to report for duty from 15-5-2000. That however, inspite of the intimation from the Personnel Officer, he attended the duties on 15-5-2000 since no written communication was served on him, but the Security Guard did not allow him to enter the premises and his punching card was also removed. That he made a complaint to the union that he was not being allowed to report for duties. That the representative of the union informed him that the Managing Director has stated that his case will be considered after few days. That since nothing was done in the matter he wrote a letter dated 30th May, 2000 to the Managing Director requesting him to allow him to join the duties. That since no communication was received he raised the dispute before the Asst. Labour Commissioner, Mapusa, and in the said conciliation

proceedings the employer made a false statement that the workman had not reported for work since 15-5-2000. That the employer also made a false statement that by letter dated 20th May, 2000 the workman was informed that he should report for duty on 25th June, 2000. The workman contended that he had not received any letter dated 20th May, 2000 from the employer but without prejudice to his rights and contentions he joined the duties w.e.f., 28-8-2000. The workman contended that the employer had wrongly refused employment to him from 15-5-2000 till 27-8-2000. The workman contended that the action of the employer in refusing employment to him from 15-5-2000 to 27-8-2000 is illegal and unjustified and as such he is entitled to receive from the employer his wages and other benefits for the said period.

3. The employer filed written statement at Exb. 5. The employer denied that employment was refused to the workman as contended by him. The employer denied that the Personnel Officer had told the workman on 13-5-2000 that he should not report for work from 15-5-2000 or that the Security Guard did not allow him to enter the premises or that his punching card was removed. The employer stated that any false statement was made before the Asst. Labour Commissioner. The employer stated that a letter dated 20th May, 2000 was sent to the workman asking him to report for work latest by 25-5-2000 but the workman failed to do so. The employer stated that the workman remained absent unauthorisedly from 15-5-2000. The employer stated that since the workman had not worked for the period from 15-5-2000 till 27-8-2000 he is not entitled to any wages or benefits for the above said period on the principle of 'no work no pay'. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman. Accordingly the evidence of the workman was partly recorded and when the case was fixed for cross examination of the workman, the parties submitted that they are to arrive at an amicable settlement and therefore at the request of the parties the case was fixed on 7-12-2005 for filing the terms of the settlement. On the said date the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 7-12-2004 at Exb. 9. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 7-12-2004 and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 7-12-2004 Exb. 9.

ORDER

1. It is agreed between the parties that the Management of M/s. Geno Pharmaceuticals Ltd., having its factory/establishment at Karaswada, Mapusa, Goa, (hereinafter referred to as the "Company") shall pay a sum of Rs. 20,000/- (Rupees twenty thousand only)

to Mr. Ulhas Ambekar, the Party I/Workman by way of an Accounts payee cheque No. 463470 dated 4-12-04 drawn on Syndicate Bank at Mapusa branch in full and final settlement of all his claims which shall include any earned wages, bonus, gratuity, leave encashment, overtime, notice pay, etc., if any arising out of his employment/non-employment/termination, and claims arising out of the Reference No. IT/02/02 mentioned hereinabove.

2. It is agreed by the workman that he shall accept the said amount mentioned hereinabove clause No. 1, in full and final settlement of all his claims arising out of his employment/termination with the company and shall acknowledge the said amount by way of receipt duly signed by him and further confirm that nothing further benefits are due and payable to him by the Company which can be computed in terms of money, and this settlement shall satisfy all his claims including the claim under Reference No. IT/02/02 including any claim of reinstatement and/or re-employment with the company and the claim/dispute pending before the Assistant Labour Commissioner, Mapusa, Goa.

No order as to costs. Pronounced in the open Court.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-01-2005 in reference No. IT/01/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/1/2000

Shri Ajit R. S. Talaulikar,
Talauli, Ponda-Goa.

... Workman/Party I

V/s

M/s. Automobile Corporation of Goa Ltd.,
Honda, Sanquelim,
Satari-Goa.

... Employer/Party II

Workman-Party I - Represented by Adv. Shri U. J. Kamat.

Employer-Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 13-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30th December, 1999 bearing No. IRM/CON-MAP/(137)/99/17 referred the following dispute for adjudication of this Tribunal.

- (1) "Whether Shri Ajit R. S. Talaulikar, Supervisor could be construed as 'Workman' as defined under the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?"
- (2) (a) If answer to the above is in affirmative than whether the action of the management of M/s. Automobile Corporation of Goa Ltd., Honda, satari-Goa, in terminating the services of Shri Ajit R. S. Talaulikar, with effect from 4-8-99, is legal and justified?
(b) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/1/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was appointed as a chemist by the Employer/Party II (for short, "Employer") from 29-1-86 and was on probation for a period of 12 months and on completion of the probation period successfully he was confirmed in the said post w.e.f. 4-2-87 vide letter dated 20-2-87. That as a chemist his duties were that of testing of raw materials, steel plates and sheets also of fastners, spring checking for chemical composition, mechanical characteristics, micro-structure and cross checking against supplies, specifications, inspection of materials, pre-treatment pointage checking, red Oxide primer checking, re-checking of failure material on line against specifications and giving of feed back. That he was promoted to the post of Assistant (Laboratory) w.e.f., 1-10-88 but he performed the same duties which were being performed by him when he was appointed as a chemist with additional duties as that of checking of finished product, recording the observations and preparing report of it and submitted it to the Quality Assurance Incharge. That during the course of his appointment as Asst. Laboratory he was transferred from time to time in different divisions/departments/sections. That during his appointment in the Industrial

Engineering Section in the Production Department, he was reporting to or taking instructions from Shri Krishnamurthy A. Raj. That he was issued a show cause notice dated 29-4-99 alleging that he had misbehaved with one Mr. Dinesh S. Rane, Manager (Production) to which show cause notice he replied on 2-5-99 denying the allegations made against him. That thereafter, enquiry was conducted against him and on receipt of the findings of the Inquiry Officer he was dismissed from service on the ground that the charges of misconduct were proved against him. The workman contended that the enquiry conducted against him is not fair proper and the findings given by the Inquiry Officer are perverse. The workman contended that the order of dismissal passed against him is illegal and unjustified and as such he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at exb. 5. The employer denied that the workman is a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and stated that he was performing duties mainly of administrative and supervisory nature and was drawing salary exceeding Rs. 1600/- p.m. and that this his last drawn salary was Rs. 5783/- p.m. The employer stated that the workman was charged for serious acts of indiscipline at the work place and a show cause notice dated 29-4-99 was issued to him based on the complaint made by the Production Manager Mr. D. S. Rane. The employer stated that since reply given by the workman was not satisfactory a charge sheet dated 25-6-1999 was issued to him and subsequently enquiry was conducted against him. The employer stated that full opportunity was given to the workman to defend himself in the enquiry and on completing the enquiry the Inquiry Officer submitted his findings holding that the charges were proved against the workman. The employer stated that on receipt of the findings from the Inquiry Officer a show cause notice dated 30-7-99 was issued to the workman and on perusing the reply from the workman to the said show cause notice and considering the other circumstances, it was decided to dismiss the workman and accordingly he was dismissed vide letter dated 4th August, 1999. The employer denied that the enquiry conducted against the workman is not fair and proper or that the findings given by the Inquiry Officer are perverse. The employer stated that the order of dismissal passed against the workman is legal and justified and the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman. Accordingly, the examination in chief of the workman was recorded and at the stage when the case was fixed for the cross examination of the workman the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed on 22-11-2004 for filing the terms of settlement by the parties. Accordingly, on the said date, the parties

appeared and filed the terms of settlement dated 22-11-2004 at Exb. 10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 22-11-2004 Exb. 10.

In the circumstances, I pass the following order.

ORDER

1. It is agreed between the parties that the Management of M/s. Automobile Corporation of Goa Ltd., having its establishment at Honda Satari, Goa, (hereinafter referred to as "Company") shall pay a sum of Rs. 1,00,000/- (Rupees one lakh only) to Mr. Ajit R. S. Talaulikar by way of an accounts payee cheque No. 328661 dated 26-10-2004 drawn on HDFC Bank at Panaji branch in full and final settlement of all their claims which shall include any earned wages, bonus, gratuity, leave encashment, overtime, notice pay, etc., if any arising out of his employment/termination, and claims arising out of the reference mentioned herein above.
2. It is agreed by the workman that he shall accept the said amount mentioned hereinabove clause No. 1, in full and final settlement of all his claims arising out of his employment with the company and shall acknowledge the said amount by way of receipt duly signed by him and further confirm that nothing further benefits are due and payable to him by the company which can be computed in terms of money, and this settlement shall satisfy all his claims including the claim under reference including any claim of reinstatement and/or re-employment.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 28-02-2005 in reference No. IT/68/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 1st April, 2005.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/68/2002

Workman rep. by
Kadamba Kamgar Union,
T-1, Sindur Bldg.,
Opp. Passport Office,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Kadamba Transport Corp. Ltd.,
Bus Terminus,
Panaji-Goa.

... Employer/Party II

Workman-Party I - Represented by Adv. Shri A. Kundaikar.

Employer-Party II - Represented by Shri A. S. Shirvoikar.

Panaji, dated: 28-2-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-10-2002 bearing No. 28/48/2002-LAB referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa in withholding three annual increments for the year 1999, 2000 and 2001 of Shri Surendra Kunkolkar, Driver, is legal and justified ?

(2) If not, what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/68/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, workman) filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was joined the services of the employer//Party II (for short 'employer') as a driver on daily wages as per the order dated 13-5-1998 and subsequently he was confirmed in service in the pay scale of Rs. 950-1600. That on 15-9-1993 he was on Panajim-Bangalore route on vehicle GDX 214. That the said vehicle was intercepted by A.I.T., Shri Uttam Naik, who had no powers to inspect the vehicle. That on report of the said inspection, the workman was issued a charge sheet dated 5-11-1993 and thereafter enquiry was held against him. That the enquiry conducted against him is not fair and proper and it was illegal and no victimize him. That the charges levelled against him in the charge sheet were not proved in the enquiry and

the findings of the Inquiry Officer are perverse as they are not based on the evidence on record. That on receipt of the findings from the Inquiry Officer the employer imposed the penalty of withholding three annual increments for the year 1999, 2000 and 2001. The workmen contended that the action of the employer in withholding three annual increments for the year 1999, 2000 and 2001 is illegal and unjustified and hence the order dated 5-9-1998 passed by the employer imposing the above penalty is liable to be set aside.

3. After the claim statement was filed, the case was fixed for the filing of the written statement by the employer. The parties however submitted that they are trying to arrive at an amicable settlement and as such at the request of the parties, the case was fixed on 18-2-2005 for filing of the terms of the settlement by the parties. Accordingly, on this date the parties appeared and submitted that the dispute between them is amicable settled, and they filed the terms of the settlement dated 18-2-2005 at Exb. 4. The parties prayed that consent award by passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 18-2-2005 Exb. 4.

ORDER

1. The Employer/Party II has withdrawn the penalty of stoppage of three annual increments for the year 1999-2000-2001 and released the Three annual increments with retrospective effect from the date of the punishment by its order dated 28-08-2003.
2. It is agreed between the Workman/Party I and the employer/Party II that the claim raised in the above reference shall stand conclusively settled and party I have no claim of whatsoever nature or any monetary benefits except the amount which is computed and paid to the workman.
3. It is agreed by the parties that claim raised by the Workman/Party I in the reference stands conclusively settled. There shall be no adverse entries in respect of the said penalty or stigma in respect of the impugned order.
4. It is agreed by the Workman/Party I that he will fully co-operate with the employer in maintaining the discipline and smooth functioning.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-02-2005 in reference No. IT/38/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 25th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/38/2003

M/s. Rosalia E. G. Dias,
Jowal Apptt., 3rd Floor,
Teofilo Brada Road,
St. Inez, Panaji. ... Workmen/Party I
V/s

M/s. Goa Football Association,
4th Floor, Atmaram Commercial Complex,
Opp. Nova Goa Hotel,
Panaji. ... Employer/Party II

Party I - Represented by Adv. Shri P. J. Kamat.

Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 11-2-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947. The Government of Goa, by order dated 2nd July, 2003 bearing No. 28/23/2003-Lab referred the following dispute for adjudication of this Tribunal.

- "(1) Whether M/s. Football Association may be construed as an "Industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?
- (2) If the answer to the above is in affirmative, then whether the action of the management of M/s. Goa Football Association in terminating the services of Smt. Rosalia E. G. Dias, Accountant, with effect from 15-3-2002, is legal and justified ?
- (3) If the answer to the above issue No. (2) is in negative, then to what relief the workperson is entitled ?"

2. On receipt of the reference a case was registered No. IT/38/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short "workman") filed her statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that she was employed as Accountant. With the employer/Party II (for short "employer") with effect from 20-9-1999. That as an Accountant she was writing books of Accounts, vouchers of the payment and doing all other works related to the accounts of the employer and besides the above work she was also doing their clerical work. That the employer is an Association of Football Clubs in Goa and carries on activities of organizing Football matches in Goa as well as participating in leagues outside Goa. That the employer has three offices in Goa and employs about 15 employees in different categories and makes profit. That the employer conducts Football tournaments for members and non-members and charges heavily for the same and also provides canteen facilities to the viewers who purchase tickets for watching the tournaments. That the employer owns a stadium at Dhuler, Mapusa and has sold out the shops tenements to different parties to conduct business activities. That the employer is an industry within the meaning of Sec. 2(j) of the Industrial Dispute Act, 1947. That on 15-3-2003 she was issued a letter informing her that her services are no more required from 15-3-2002. That at the time of termination of her service she was paid wages of Rs. 3800/- per month and after termination of her services the employer has appointed an Accounts Clerk in her place for doing the same work which she was doing. That the workman made demand dated 20-3-2002 on the employer, to reinstate her in service with full back wages as termination of her service was illegal and unjustified. That however inspite of the receipt of the said letter she was not reinstated in service. The workman contended that the termination of her service amounted to retrenchment and the employer had failed to comply to with Section 25 (F) of the Industrial Dispute Act, 1947. The workman contended that the termination of service by the employer w.e.f. 15-3-2002 is illegal and unjustified and as such she is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb.6. The employer stated that it is not an industry within the meaning of Section 2 (j) of the Industrial Dispute Act, 1947 as it is not carrying any business or trade or undertaking or manufacturing or services and therefore the dispute raised is not an industrial dispute. The employer stated that there was conspiracy between the workman and the then Hon. General Secretary of the Association, Mr. Agnelo Alcasoas, where by the workman herself asked Mr. Agnelo to terminate her service by letter dated 15-3-2002 for the reasons best known to them. The employer stated that no resolution was passed by the Association to discontinue her services and Mr. Agnelo had no authority to give to the workman the letter dated 15-3-2003 and that she herself has remained away from the work in conspiracy with Mr. Agnelo. The employer stated that the workman was in charge of the

Accounts and an enquiry was instituted against her for conspiring with Mr. Agnelo for misappropriate use of money of the Association. And since it was observed after the enquiry that the conspiracy was proved Mr. Agnelo wrote a letter of termination dated 15-3-2002 for which, no resolution was passed by the Association. The employer stated that the workman was performing duty of supervisory nature and as such she is not a workman within the meaning of Section 2(s) of the Industrial Dispute Act, 1947. The employer denied that the termination of service of the workman amounts to retrenchment or that she is covered under Section 25 (F) of the Industrial Dispute Act. The employer stated that the workman has not made out any case and she is not entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the evidence of the workman was partly recorded. At the stage when the case was fixed for recording the cross examination of the workman on 24-1-2005, the parties submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 24-1-2005 at Exb. 14. The parties prayed that consent award be past in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 24-1-2005 Exb.14.

ORDER

1. It is agreed between the parties that the Goa Football Association (hereinafter referred to as the "Association") shall pay a sum of Rs. 2,00,000/- (Rupees two lakh only) to Mrs. Rosalia E. G. Dias by way of an Accounts Payee cheques in full and final settlement of all her claims which shall include the wages, bonus, Gratuity, leave encashment, overtime notice pay, Ex -gratia etc. if any, arising out of her employment/termination and claims arising out of the reference mentioned hereinabove.
2. It is agreed by Mrs. Rosalia E.G. Dias that she shall accept the said amount mentioned hereinabove clause No. 1, in full and final settlement of all her claims arising out of her employment with the Association and shall acknowledge the said amount by way of receipt duly signed by her and she further confirm that nothing further benefits are due and payable to her by the Association which can be computed in terms of money, and this settlement shall satisfy all her claims including the claim under reference and she shall have no claim of whatsoever nature including any claim of reinstatement and/or reemployment.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 8-02-2005 in reference No. IT/21/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 25th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/21/2000

Shri Jaganath Thamankar,
Rep. by the Secretary,
Goa Trade and Commercial Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. ... Workman/Party I

V/s

The Managing Director,
M/s. Power Engineering Corporation,
Satyam Pedem Road,
Mapusa, Bardez-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri P. Chawdikar.

Panaji, dated: 8-2-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947. The Government of Goa, by order dated 18th February, 2000 bearing No. IRM/CON/(62)/99/1033 referred the following dispute for adjudication of this Tribunal.

- "(1) Whether Shri Jaganath Tahmankar is a "workman" as defined under the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?
- (2) If the answer to the above is in affirmative, then whether the action of the management of M/s. Power Engineering Corporation in refusing employment to Shri Jaganath Tahmanakar, with effect from 8-1-1999, is legal and justified.
- (ii) If the answer to 2(i) is negative, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered No. IT/21/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short "employer") as a Fitter and he was doing the work of servicing of the engines and alignment of generators etc. That the workers employed by the employer were not provided with proper rest room, drinking water facilities, lavatories, hand gloves and shoes, first aid treatment etc. That the Managing Director, Mr. Atul D. Pai Kane was constantly harassing and threatening the workman and he was made to stay beyond the normal working hours. That because of the above said attitude of the Managing Director the workers, unionized themselves under the banner of Goa Trade and Commercial Workers Union and this fact was informed to the employer vide letter dated 13-12-1998. That the employer was also informed about the election of Six Executive Office bearers, and it was requested that the said six workers should be treated as protected workmen. That soon after the unionization of the workmen the employer started harassing the workmen by adopting various illegal and unfair labour practices in order to pressurize the workers to leave the union. That on 30/12/1998 the employer refused employment to Mr. Prakash Prabhu, Madhu Tari, Vishwas Chodankar, Rupesh Naik, Rajan Arolkar, Chandrakant Purkhe, David Fernandes, Felix Rodrigues and Jeetendra Veluskar without assigning any justified reasons. That on 8-1-1999 the employer refused employment to the workman and therefore he raised industrial dispute dated 8-12-1999 before the Deputy Labour Commissioner, Panaji, which dispute was admitted in conciliation. That because of the rigid and adamant attitude of the employer conciliation resulted in failure and the failure report was submitted to the Government on 14-1-2000. That before refusing employment the employer did not comply with the provisions of Industrial Dispute Act, 1947 and no enquiry whatsoever was conducted against the workman. The workman contended that the refusal of employment to him by the employer is illegal and unjustified and after refusal of employment to him the employer has recruited new contract workers. The workman contended that since refusal of employment to him is illegal and unjustified he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that the dispute referred is not an industrial dispute and therefore the reference is liable to be rejected. The employer stated that the workman was a foreman performing supervisory functions and was drawing salary of more than 1600/- per month and as such he is not a workman as defined under Industrial Dispute Act, 1947. The employer stated that the reference is bad as it proceeds on the assumption that the services of the workman are terminated when in fact the workman had not reported for work. The employer denied that his Managing Director was harassing or threatening, the workers or that they were not provided with proper

facilities such as rest rooms, drinking water facilities, lavatories, first aid treatment etc. The employer denied that the workman was made to stay back in the factory beyond working hours by the Managing Director. The employer admitted that by letter dated 13-12-1998 it was informed that the workers had unionized but denied that the Managing Director starting harassing, victimizing or adopting illegal and unfair labour practices on hearing about unionization of the workman. The employer stated that from 30-12-1998 the workers resorted to illegal and unfair strike and inspite of the efforts made, the workers including the workman did not report for work and therefore by letter dated 6-1-1999 the services of the workmen mentioned in the claim statement were terminated. The employer stated that the action of termination of service of the said workers is legal and justified. The employer stated that the service of the workman were not terminated but he did not report for work and subsequently inspite of the offer made vide letter dated 3-9-99 he failed to resume duty. The employer denied that the workman is entitled to reinstatement in service with full back wages. The employer stated that the workman is gainfully employed and therefore he has failed to report for work. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed Exb.6 and thereafter the evidence of the workman was recorded. After completing the evidence of the workman the evidence of the employer was partly recorded. At this stage the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed for filing the terms of settlement by the parties on 26-11-2004. On this date the parties appeared and submitted that the dispute between them is amiably settled and they filed the terms of settlement dated 26-11-2004 at Exb. 12. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 26-11-2004 Exb.12.

ORDER

1. It is agreed between the parties that the workman named in the Schedule of reference namely Shri Jaganath Tamhankar is to be treated to be retrenched w.e.f. 31-10-2004.
2. In view of the above, the employer/Party No. II has agreed to pay the workman, Shri Jaganath Tamhankar the following compensation.
 - a) Gratuity @ 15 days salary for every completed year of service as on 31-10-2004.
 - b) Retrenchment Compensation as per Law.
 - c) 43% Back Wages from 29-12-1998 to 31-10-2004.

- d) Unpaid leave salary due to the credit of the workman.
- e) Unpaid salary for the month of December, 1998.
- f) In view of the above terms of the settlement the workman, Shri Jaganath Tamhankar shall be paid an amount in two installments by Cheque No. 0975695 dated 26-12-2004 for Rs. 62000/- (Rupees sixty two thousand only) and Cheque No. 0975696 dated 31-12-2004 for Rs. 62024/- (Rupees sixty two thousand twenty four only) drawn on Goa Urban Co-operative Bank, Mapusa Branch.
3. It is agreed between the parties that the Management shall issue a Bonafide Service Certificate to the workman mentioning the correct date of joining years of service and designation of the workman.
4. It is agreed between the parties that the employer/Party No. II shall pay the amount to the workman as mentioned above by cheques on the date of filing of these settlement before this Hon'ble Court and the workman agrees to issue a valid receipt towards its acknowledgement.
5. It is agreed between the parties that the employer/Party II has deduct an amount of 10% at source from the total dues payable to the workman and agrees to pay the same to the Goa Trade and Commercial Workers Union by a Cheque on the date of signing of these settlement.
6. In view of the above terms, the workman agrees that their Dispute stands conclusively settled and that they have no claim of whatsoever nature against the employer/Party No. II.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 28-12-2004 in reference No. IT/56/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/56/99

Shri Rajesh Goankar,
Rep. by the Secretary,
Goa Trade and Commercial
Workers' Union,
Velho's Building, 2nd Floor,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Tough Seals,
Bethora Industrial Estate,
Bethora,
Ponda-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. V. Nigalye.

Panaji, dated: 28-12-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 17th May, 1999 bearing No. IRM/CON/P/(173)/2997/2580 referred the following dispute for adjudication by this Tribunal.

"(1) Whether the action of the management of M/s. Tough Seals, Bethora Industrial Estate, Bethora, Ponda-Goa, in terminating the services of Shri Rajesh Goankar Operator, with effect from 1-10-1997, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/56/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short "Workman") filed his statement of claim at Exb. 8. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (for short "Employer") is having a factory situated at Bethora Industrial Estate, Bethora, Ponda-Goa. That since the wages paid to the workmen were very low and pathetic the Union namely Goa Trade & Commercial Workers Union (for short, "Union") at the request of the workmen raised demand on the management by letter dated 12-12-96 but the management however refused to accede to the demands and started adopting unfair and illegal labour practices in order to harass and victimise the workmen and pressurise them to leave the union membership. The workmen including the workmen in the present reference were threatened that if they do not leave membership of the union their services will be terminated. That the employer without any justified

reasons refused employment to the workmen and also to the other two workmen by name Mr. Rajesh Goankar and Mr. Gurudas Goankar w.e.f. 1-1-98. That the employer thereafter allowed Mr. Gurudas Goankar to report for work from 15-3-98 but the workman was not allowed to resume his duty. That the dispute was raised before the Asst. Labour Commissioner, Ponda, as regards illegal refusal of employment to the workman and since rigid and adamant stand was taken by the employer in the conciliation proceedings held by the Asst. Labour Commissioner, no settlement could be arrived at. The workman stated that the refusal of employment to him is illegal, unjustified and bad in law. The workman stated that no legal dues of whatsoever nature were paid to him prior to the refusal of employment. The workman stated that refusal of employment to him by the employer is in contravention of the provisions of Sec. 25F of the Industrial Disputes Act, 1947 and no opportunity of whatsoever nature was afforded to him before illegally refusing employment to him. The workman stated that no show cause notice, warning letter, memorandum or chargesheet was issued to him prior to the refusal of employment. The workman therefore prayed that he is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement denying the contentions made by the workman in the statement of claim. The employer stated that there is no industrial dispute and that the Goa Trade & Commercial Workers Union has no locus standi or authority to represent the workman in the present reference. The employer denied that the workman was employed as an operator and stated that his gross salary was Rs. 750 p.m. The employer denied that the employer had put in 4 years of continuous service or that he was diligent and efficient during the tenure of his service. The employer denied that without justifiable reasons the services of the workman and Shri Gurudas Goankar were terminated. The employer stated that the services of the workman were terminated for just and valid reasons and Shri Gurudas Goankar was subsequently reinstated as it was felt that his termination may not be legal due to technical defects. The employer denied that refusal of employment to the workman is illegal or he was entitled to any legal dues or that he was entitled to any opportunity before refusal of employment to him. The employer stated that its factory is closed. The employer denied that any mandatory provisions of law were flouted in refusal of employment to the workman. The employer denied that the workman is entitled to any relief as claimed by him.

4. On the pleadings of the parties issues were framed at Exb. 10 and thereafter case was fixed for recording the evidence of the workmen. At this stage the parties submitted that they are trying to arrive at an amicable settlement and accordingly at their request the case was fixed on 3-11-2004 for filing the terms of settlement. On this date the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 3-11-2004 at Exb. 12. The parties prayed that consent award be passed in

terms of the said settlement. I accept the submissions made by the parties pass the consent award in terms of the said settlement dated 3-11-2004-Exb. 12.

ORDER

1. The Workmen/Party I have settled all their disputes with the Party II in view of the consent terms filed in the Hon'ble Industrial Tribunal, Government of Goa, in Ref. No. IT/42/1999.
2. In view of the said consent terms filed in Ref. No. IT/42/1999, the disputes of the Party I with the Party II have been conclusively settled and the Party I have no claim or demand of whatsoever nature against Party II.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-01-2005 in reference No. IT/68/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 7th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/68/2003

Shri Bomdo R. Naik,
Rep. by Kadamba Kamgar Union,
T-1, Sindur Bldg., Opp. Passport Office,
Panaji-Goa. ... Workman/Party I

V/s

M/s. Kadamba Transport Corporation Ltd.,
East Wing Bus Terminus,
Panaji-Goa. ... Employer/Party II

Workman-Party I - Represented by Adv. Shri A. Kundaikar.

Employer-Party II - Represented by Adv. Shri P. M. Nimbalker.

Panaji, dated: 11-1-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15-10-2003 bearing No. 28/26/2003-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of M/s. Kadamba Transport Corporation Ltd., Panaji-Goa, in dismissing from service Shri Bomdo R. Naik, Conductor, with effect from 8-4-2002, is legal and justified ?

If not, what relief the workman is entitled to ?"

2. On receipt of the reference, a case was registered under No. IT/68/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The facts of the case in brief as pleaded by the Workman-Party I (for short, "Workman") are that he was appointed as a conductor by the Employer-Party II (for short, "Employer") from 14-4-83. That on 18-3-2000 when he was on route Panaji-Vasco on Vehicle No. GA-01-X-0113 the bus was intercepted by the line checking staff and he was issued a default notice for the irregularities mentioned in the said default notice. That he replied to the said default notice denying the allegations made against him. That thereafter he was issued a charge sheet dated 23-5-2000 which charges he denied by reply dated 9-6-2000. That an enquiry was conducted into the said charge sheet in which the management failed to prove the charges against him. That the Inquiry Officer submitted his findings holding him guilty of the charges of misconduct and thereafter a show cause notice dated 11-3-2002 was issued to him calling for explanation. That on receipt of the reply the employer imposed the penalty of dismissal of services on the workman. The workman contended that the enquiry conducted against him is illegal and unjustified and also the findings given by the Inquiry Officer are perverse. The workman contended that the penalty of dismissal from service imposed upon him by the employer w.e.f. 8-4-2002 is illegal and unjustified and it is disproportionate to the charges leveled against him. The workman contended that the action on the part of the employer of dismissing him from service is illegal and unjustified and as such he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the service records of the workman was not honest and without any blemish and that right from the inception of service, the workman was manipulating the revenue of the Corporation thereby causing loss to the employer. The employer stated that various irregularities were committed by the workmen from time to time and he was imposed punishment in the form of warnings, fine, suspension etc. The employer denied that the enquiry conducted against the workman is not fair and proper or that no charges were proved against him in the enquiry held against him. The

employer denied that the findings of the Inquiry Officer are perverse. The employer denied that the punishment of dismissal from service imposed upon the workman is illegal and unjustified. The employer denied that the workman is entitled to any relief. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the workman on preliminary issues 1 and 2. However, before the evidence was recorded the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed on 21-12-2004 for filing the terms of settlement by the parties. Accordingly, on this date the parties appeared and filed the terms of settlement dated 21-12-2004 at Exb. 9. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 21-12-2004 at Exb. 9.

ORDER

1. The Workman/Party I do and does hereby waives all his claims, demand and disputes and has no other claims. It is agreed by the workman/Party I that he will not claim subject matter reference in future in any other Tribunal or Court.
2. It is agreed between the parties that, the workman concern in the reference shall be appointed in the service of the Corporation as a Conductor within 15 days from the date of filing the consent terms.
3. It is agreed by the Employer/Party II that the Workman/Party I will be appointed as a fresh Conductor on probation in terms of Certified Standing Orders of the Corporation in the pay scale of Rs. 3050-75-3950-80-4590.
4. It is agreed by the Workman/Party I, to accept the fresh appointment without back wages, without continuity in service and without protecting the seniority.
5. It is agreed between the parties that, the Workman/Party I will not be entitled for benefits of arrears/difference in wages from the date of dismissal till date of joining.
6. It is agreed by the Workman/Party I that, he will fully co-operate with Employer/Party II in discharging his duties sincerely.
7. It is agreed by the Workman/Party I, that, he will not raise any claim before any authority for any back wages/monetary benefits and seniority in service.
8. It is agreed by Employer/Party I that he will withdraw all the claim applications filed before

the concerned authorities prior to joining to the duties.

9. It is agreed between the parties that the claim raised in the above reference stands conclusively settled in terms of the present consent terms.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 09-02-2005 in reference No. IT/31/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 25th February, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/31/97

Workmen Rep. by
Goa Trade & Commercial Workers Union,
Velho Building,
Panaji-Goa. ... Workmen/Party I

V/s

M/s. Everex Stamping Pvt. Ltd.,
Work Plot No. 11 & 13,
Electronic City, Verna,
Salcete-Goa. ... Employer/Party II

Party I/Workmen - Represented by Adv. Suhas Naik.

Party II/Employer - Represented by Adv. Shri G. K. Sardessai.

Panaji, dated: 9-2-2005.

AWARD - (PART III)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the

Government of Goa by order dated 24th April, 1997 bearing No. IRM/CON/SG/(20)/96/2242 referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Everex Stamping Pvt. Limited, Verna-Goa, in refusing employment to the following 15 workers amounts to lockout ?

- | | |
|-----------------------|-------------------------|
| (1) Leandro Fernandes | (9) Camilo Fernandes |
| (2) Surat R. Naik | (10) Gopi D. Naik |
| (3) Harischandra K. | (11) Sangeeta K. Naik |
| (4) Cashmiro Mendes | (12) Sangeeta Naik |
| (5) George Alvares | (13) Shyamal N. Naik |
| (6) Anjana Tari | (14) Sheik Mohd. Nanief |
| (7) Marcelina Almeida | (15) Ritesh Shirodkar |
| (8) Vasanti K. Gauns | |

- (2) Whether the demand of the workmen for full wages with effect from 1-2-1996 till they are provided employment in the factory is legal and justified ?
- (3) What relief, if any, the above fifteen workers are entitled to, pending adjudication and final disposal of this industrial dispute ?
- (4) What relief, if any the workmen are entitled towards medical care and medical expenses, they having fallen out of the benefit period on account of stoppage of payment of employer's and employee's contribution to Employee's State Insurance benefits.

2. On receipt of the reference, a case was registered under No. IT/31/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the Workmen-Party I (for short, "Union") filed statement of claim at Exb. 4. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (for short, "Employer") is a Proprietary concern and deals in the business of manufacturing fan blades at Verna Industrial Estate and is having its registered office at Rani Pramilla Building, Panaji, Goa. That the workers of the employer on 11th December, 1995 decided to join the union namely the Goa Trade & Commercial Workers Union. That the employer was informed by the Union vide letter dated 14th December, 1995 about the fact of the workers becoming the members of the said union but the employer refused to accept the said letter. That thereafter by letter dated 27-12-95 the union raised charter of demands against the employer and since then the employer started harassing the workers and demanded that they should resign from the membership of the union. That in order to harass the workers the employer locked out the factory from 20th January, 1996 and since in spite of the request from the union not to lock out the factory, the employer did not do so, the union raised industrial dispute before the Dy. Labour Commissioner, Margao. That the employer thereafter issued a closure notice stating that the establishment will be closed w.e.f. 31-1-96 and the copy of the said notice was sent to the Dy. Labour Commissioner, Margao. That the union thereafter raised dispute about the notice

of closure. That the Dy. Labour Commissioner, Margao held conciliation proceedings in the matter of lock out and termination of services of 14 workmen (for short, "Workmen") who are parties to the present reference. That the conciliation proceedings ended in failure since none appeared on behalf of the employer before the Dy. Labour Commissioner, Margao. That by the letter dated 1-11-96 the union brought to the notice of the Labour Commissioner the irregularities committed by the employer at his factory at Verna and it was also brought to his notice that the employer had recruited new workers at the factory and the production has been already started w.e.f. 22-10-96 with the help of the said new recruited workers. That the Labour Commissioner by letter dated 6-11-96 informed the parties to attend the conciliation proceedings and though the employer requested for time to file the written statement before the Labour Commissioner, no written statement came to be filed and thus the matter remained unresolved. The union stated that there was no factual closure of the establishment on the part of the employer and therefore the action of the employer in locking out the workmen and refusing employment to them is illegal and unjustified. The union therefore prayed that it be held that (a) refusing of the employment to the workmen by the employer amounts to lock out; (b) the employer be directed to pay full wages to the workmen w.e.f. 1-2-96 till they are provided employment in the factory; (c) the action of the management in refusing employment to the workmen and the employing of new workers in their place is illegal and unjustified.

3. The employer filed written statement at Exb. 5. By way of preliminary objection the employer stated that the reference is null and void as no industrial dispute existed. The employer denied that there was lock out as claimed by the union and stated that the workmen unilaterally and without any reason resorted to wilful go slow from 2-1-96 as a result of which the production was reduced considerably to the level of 50% of the normal and as such by notice dated 15-1-96 the workers were informed that above said act on their part amounted to misconduct and they were called upon to show cause and explain why disciplinary action should not be taken against them. The employer stated that in spite of the said notice the workmen continued to resort to go slow tactics and therefore by another notice dated 19-1-96 the workmen were advised to ensure normal production failing which disciplinary action will be taken against them. The employer stated that in spite of the said notice the workmen continued with their act of go slow. Therefore another notice dated 21-1-96 was given to them advising them to restore normal productivity. The employer stated that since the workman continued with their illegal act and there was also a spate of violent activities and threat to managerial and supervisory staff, the management had no option but to take a decision to close the factory and therefore by means of closure notice the workman were informed that the management decided to close the operations of the factory from 30-1-96. The employer denied their workers are the members of Goa Trade & Commercial

Workers Union or that the management started harassing the workers and pressurised them to resign from the membership of the union. The employer stated that the Dy. Labour Commissioner was informed that closure cannot be a subject matter of industrial dispute and therefore requested him to treat the matter as closed. The employer denied that any new workers were recruited or that the production commenced from 20-2-96 as claimed by the union. The employer denied that there was no factual closure of the factory. The employer stated that the services of the workman were terminated on account of closure and there was no new recruitment as alleged. The employer denied that the workmen are entitled to any relief as claimed. The union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7. After the issues were framed the case was fixed for the evidence of the union. The employer filed an application dated 8-10-99 at Exb. 11 stating that a settlement has been arrived at with the workman Harischandra Kandeparkar, Ritesh Shirodkar, Gopi Naik, Casmiro Mendes, Shyamal N. Naik, Sangeeta K. Naik, Anjana Tari, Marcelina Almeida, Surat R. Naik, Vasanti K. Gauns, Sheikh Mohd. Nanief and Leandro Fernandes. Along with the said application the employer produced the certified true copy of the settlement dated 19th May, 1998 signed by the above workmen and prayed that award be passed in terms of the said settlement. The union did not object to the passing of the award in terms of the said settlement. Accordingly, Award-Part I dated 14-9-2000 was passed in terms of the said settlement dated 9th May, 1998 in respect of the above said workmen. The employer also filed an application dated 8-10-99 stating that the workman Ms. Sangeeta K. Naik had submitted her resignation vide letter dated 25-11-96 and she had received compensation in full and final settlement of her claim and that she had also accepted the closure. The employer further stated that the workman Mr. Camilo Fernandes had also received compensation in full and final settlement of his claim and that he had also accepted the closure. The employer annexed to the said application the certified true copy of the resignation letter given by Ms. Sangita Naik and the receipt dated 25-1-96 issued by her acknowledging the receipt of the compensation. The employer also annexed the certified true copy of the receipt given by Mr. Camilo Fernandes acknowledging the receipt of the compensation in full and final settlement of his claim. The employer prayed that no dispute award be passed in respect of the above said workmen. The union gave no objection for passing the no dispute award in respect of the said workmen. Accordingly, Award Part-II dated 14-9-2000 was passed holding that the reference made by the Government in respect of workman Ms. Sangita Naik and Mr. Camilo Fernandes does not survive as the dispute does not exist.

5. After the passing of the Award Part-I and part-II as mentioned above the dispute survived only in respect of the workman Mr. George Alvares. The union was given several opportunities to lead evidence on behalf of the

workman Mr. George Alvares but no evidence came to be led on his behalf. Subsequently, an application dated 27-9-2004 was filed by the union at Exb. 13. In the said application the union stated that efforts were made to try to contact the workman Mr. George Alvares and in spite of the several reminders the workman failed to remain present before this Tribunal and therefore the union is not able to proceed with the evidence of the workman. The union therefore stated that they do not wish to proceed further with the evidence on account of the failure of the workman Mr. George Alvares to attend this Tribunal. In view of the said application the evidence of the union was closed and subsequently it was submitted on behalf of the employer also that the employer does not wish to lead any evidence in the matter.

6. The reference of the dispute was made by the Government at the instance of the union since it challenged the action of the employer in refusing employment to the workman Shri George Alvares and demanded full wages from 1-2-96 till he was provided employment in the factory and the amount towards medical care and medical expenses. Hence it is the workman who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol.71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

7. In the present case the dispute was raised by the union as regards refusal of employment to the workman Shri George Alvares by the employer which according to it amounts to lockout and also raised the demand for

full back wages from 1-2-96 till the workman was provided employment in the factory and the amount towards medical care and medical expenses. Since it was at the instance of the union that the reference of the dispute was made by the Government, the burden was on the union to prove that the action of the employer was illegal and unjustified and its demands were legal and justified. The Union representing the workman has filed an application, as stated above and submitted that efforts were made to contact the workman Mr. George Alvares but the workman failed to remain present before this Tribunal and as such the union stated that they do not wish to proceed further with the evidence on account of the failure of the workman Mr. George Alvares to attend this Tribunal. There is no material before me to hold that the action of the employer in refusing employment to the workman Shri George Alvares amounts to lockout and also that the demand for full wages and medical care and medical expenses is legal and justified. I, therefore, hold that the union has failed to prove that the action of the employer in refusing employment to the workman Shri George Alvares amounts to lockout and also that the demands for full wages and medical care and medical expenses are legal

and justified. This being the case the reference is liable to be answered against the union/workman.

In the circumstances, I pass the following order.

ORDER

It is hereby that the action of the management of M/s. Everex Stampings Pvt. Limited, Verna-Goa, in refusing employment to the workman Shri George Alvares, does not amount to lockout. It is hereby further held that the demand of the workman Shri George Alvares for full wages from 1-2-1996 till he is provided employment in the factory is not legal and justified. It is hereby further held that the workman Shri George Alvares is not entitled to any relief towards medical care and medical expenses.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.